



INSIGHTS

107th Congress

October 22, 2001

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INSIGHTS is prepared expressly for the Department of Energy's Office of Federal Energy Management Programs (FEMP). The purpose of ***INSIGHTS*** is to provide FEMP management staff with timely information on legislative activities relevant to the program. ***INSIGHTS*** is prepared for FEMP by Energetics, Incorporated, (202) 479-2748.

I. WEEKLY SUMMARY

THIS WEEK IN CONGRESS

On October 17, the House and Senate passed *H. J. Res. 69*, the third Continuing Resolution for FY 2002 appropriations bills. This resolution amends *P.L. 107-44*, the first Continuing Resolution by extending Federal operations through October 31, 2001.

➤ HOUSE

The House is scheduled to return on Tuesday, October 23 after an emergency closure last week due to the evidence of anthrax in House Office Buildings. No hearings, mark ups, or votes of interest have been announced for the remainder of the month. No hearings, mark ups, or votes of interest have been announced.

➤ SENATE

While Senate office buildings closed last week, the Senate remained in session. **The Senate will resume activities on Tuesday, October 23.** No hearings, mark ups, or votes of interest have been announced for the remainder of the month.

Energy Legislation The Senate Republican leadership is expected to introduce an energy bill early this week in response to the Majority's decision on October 9 to discontinue marking up a bill at the committee level. Majority Leader Tom Daschle (D/ND) has hinted that he may instead introduce a comprehensive energy bill on the Senate floor before Congress adjourns for the year (see October 15, 2001 issue of *INSIGHTS: 107th Congress* for details). Introduction of the Republican bill is being led by Senators Frank Murkowski (AK), Ranking Minority Member of the Committee on Energy and Natural Resources; Larry Craig (WY); Craig Thomas (ID); and Ron Santorum (PA). Secretary of Energy Spencer Abraham echoed the Republicans' call for an energy bill saying, "Without energy security, you can't have national security...This needs to take center stage soon." In response, John Kerry (D/MA) indicated his plan to filibuster any bill that includes a provision to open the Artic National Wildlife Refuge to exploration and drilling.

This week, Senator Jeff Bingaman (D/NM), Chairman of the Committee on Energy and Natural Resources may meet with the Senate leadership of three other committees that would have jurisdiction over a comprehensive energy bill: Commerce, Environment and Public Works, and Finance. The meeting would be in advance of introducing the Democrats' comprehensive bill directly on the Senate floor for consideration and a vote.

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II. COMMITTEE ACTIVITY

CONFERENCE COMMITTEES

H.R. 2271 – FY 2002 Appropriations for Interior and Related Agencies The House and Senate approved the *Conference Report (107-234)* on October 17. **The bill provides \$23 million for the Department of Energy’s Federal Energy Management Program** as well as funding for the agency’s energy research and development and state grant programs.

H.R. 2904/S. 1460 – FY 2002 Appropriations for Military Construction House and Senate conferees approved *Conference Report 107-246* on October 16; the report is now pending a vote by the full House and Senate. The bill provides \$1.4 billion in military construction funds for barracks, child development centers, and hospitals and medical facilities. The bill also provides \$4.1 billion for Family Housing including \$1.2 billion for new construction and improvements to existing units and \$2.9 billion for the operation and maintenance of existing units.

Additional Conference Negotiations FY 2002 appropriations bills still pending conference committee negotiations include:

- *H.R. 2500/S. 1191 – Commerce, Justice, State, and the Judiciary*
- *H.R. 2311/S. 1171 – Energy and Water Development*
- *H.R. 229/S. 1178 – Transportation and Related Agencies*
- *H.R. 2620/S. 1216 – Veterans’ Administration, Housing and Urban Development, and Independent Agencies (includes the Environmental Protection Agency)*
- *H.R. 2590/S. 1398 – Treasury and General Government (includes the General Services Administration)*

HOUSE

Comments or Action Items

No new information to report.

SENATE

Comments or Action Items

No new information to report.

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STATUS OF FY 2002 APPROPRIATIONS BILLS

(In Billions)

HOUSE

SENATE

Jurisdiction/ FY 2002 Budget Request	302(b) Allocations/ Approved Funding Level	Bill No.	Full Cmte.	Floor	Conf.	302(b) Allocations/ Approved Funding Level	Bill No.	Full Cmte.	Floor	Conf.
Agriculture \$ 15.409	\$15.519 \$15.669	H.R. 2330	June 13	July 13		\$16.092 \$16.4	S. 1191	July 17	Still Pending	
Commerce \$ 37.944	\$38.541 \$38.5	H.R. 2500	July 13	July 19	Week of 10/15(?)	\$38.760 \$41.5	S. 1215	July 19	Sept. 13	Week of 10/15(?)
Defense \$300.962	\$300.292					\$298.568				
Energy and Water Development \$ 22.517	\$23.704 \$23.7	H.R. 2311	June 25	June 28	Week of 10/15 (?)	\$ 25.129 \$ 25.4	S. 1171	July 12	July 19	Week of 10/15 (?)
Interior *** \$ 18,092 Pending President's Signature	\$18.941 \$ 18.0	H.R. 2217	June 13	June 21	Oct. 17	\$ 18.527 \$ 18.6	*H.R. 2217	June 28	July 12	Oct. 10
Labor / HHS \$115.682	\$119.758 \$123.1	H.R. 3061	—	Oct. 9		\$119.000		Oct. 11		
Military Construction \$ 9.650	\$10.155 \$10.5	H.R. 2904	Sept. 12	Sept. 25		\$ 9.649 \$10.5	S. 1460	Sept. 25	Sept. 26	Oct. 16
Transportation \$ 14.891	\$14.893 \$14.9	H.R. 2299	June 20	June 26	Week of 10/15(?)	\$ 15,579 \$ 15,579	S. 1178	July 12	August 1	Week of 10/15(?)
Treasury \$ 16.488	\$16.880 \$ 17.0	H.R. 2590	July 17	July 25		\$ 16.972 \$ 16.972	S. 1398	July 26	Sept. 4	
VA/HUD \$ 83.683	\$ 84.05	H.R. 2620	July 17	July 31	Week of 10/15 (?)	\$ 84.13 \$ 84.13	S. 1216	July 19	August 2	Week of 10/15 (?)
Total 302(b) Allocations/ FY 2002 Budget Request \$658.792	\$661.300					\$661.300				

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III. NEW LEGISLATION

HOUSE

Number	Short title	Date	Sponsor	Status
H.R. 3089	<i>Renewable and Distributed Energy Net Metering Act</i>	October 11	Lee Terry (R/NE) <i>Committee on Energy and Commerce</i>	Referred to Committee on Energy and Commerce
	Key Provisions:	Amends Part II of the <i>Federal Power Act</i> by providing for the use of net metering for fuel cells or generation units that use solar, wind or biomass and have a maximum generating capacity of 200 kilowatts.		
H.R. 3090	<i>Economic Security and Recovery Act of 2001</i>	October 11	William M. Thomas (R/CA) <i>Committee on Ways and Means, Chairman</i>	Referred to the Committee on Ways and Means; Ordered to be reported (amended)
	Key Provisions:	Amends the <i>Internal Revenue Code of 1986</i> to provide tax incentives to businesses and individuals for economic recovery. Includes extensions of certain expiring provisions including credit for qualified electric vehicles, credit for electricity produced from renewable resources, and deduction for clean-fuel vehicles and certain refueling property.		
H.R. 3099	<i>Biofuels Energy Independence Act of 2001</i>	October 11	Marcy Kaptur (D/OH) <i>Committee on Appropriations</i>	Referred to Committee on Agriculture
	Key Provisions:	Establishes that the Secretary of Agriculture may establish and administer a Biofuels Feedstocks Reserve Program to make and guarantee loans for the production, distribution, development, and storage of biofuels.		
H.R. 3116	<i>No Short Title</i>	October 12	Ken Bentsen, (D/TX) <i>Committee on the Budget</i>	Referred to Committee on Ways and Means
	Key Provisions:	Amends the <i>Internal Revenue Code of 1986</i> to eliminate tax subsidies for ethanol fuel.		

SENATE

Number	Short title	Date	Sponsor	Status
S. 1529	<i>National Energy Infrastructure Security Program Establishment Act</i>	October 10	Mary Landrieu (D/LA) <i>Committee on Energy and Natural Resources</i>	Referred to the Committee on Energy and Natural Resources
	Key Provisions:	Directs the Assistant to the President for Homeland Security (Assistant) to establish the “National Energy Infrastructure Program” in which the Assistant shall provide funds to states to implement state plans to provide security against hostile and natural threats to critical energy infrastructure facilities. In consultation with Federal security officials and the Secretaries of Commerce, Energy, and Interior, the Assistant shall approve or recommend changes to each state plan. Establishes a National Energy Infrastructure Trust Fund in the U.S. Treasury. The Treasury shall transfer funds to the Assistant and the Secretary of Interior for states to carry out activities under approved state plans in non-coastal areas and producing (oil and natural gas reserves) coastal states. (e.g. Alaska, Alabama, California , Florida, Louisiana, Mississippi, Texas).		
S. 1534	<i>Department of Homeland Security Act of 2001</i>	October 11	Joseph Lieberman (D/CT) <i>Committee on Environment and Public Works</i>	Referred to the Committee on Governmental Affairs
	Key Provisions:	Establishes the Department of National Homeland Security. Transfers numerous authorities, functions, personnel and assets to the Department. Establishes within the Department the Directorate of Prevention, Directorate of Critical Infrastructure Protection, Directorate for Emergency Preparedness and Response, and the Office of Science and Technology. The Directorate of Critical Infrastructure will be responsible for, among other responsibilities, coordinating efforts to address the vulnerability of the U.S. to electronic or physical attacks on critical infrastructure, including utility, transportation, and energy resources. Establishes that the Secretary of National Homeland Security provide assessment reports to Congress. Requires the establishment of planning, programming and budgeting procedures. Requires that the Secretary of National Homeland Security ensure that the Department complies with all applicable environmental, safety and health statutes.		
S. 1566	<i>Renewable Energy Incentives Act</i>	October 18	Harry Reid (D/NV) <i>Committee on Appropriations, Subcommittee on Energy and Water Development, Chair; Subcommittee on Interior; Committee on Environment and Public Works, Chair</i>	Referred to the Committee on Finance

Number	Short title	Date	Sponsor	Status
	Key Provisions:	Amends the <i>Internal Revenue Code of 1986</i> to modify and expand credit for electricity produced from renewable resources and waste products.		

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IV. ADMINISTRATIVE INITIATIVES

Federal Management Initiatives On October 15, the Administration announced the submission to Congress of two draft bills to improve the management of Federal agencies.

Managerial Flexibility Act of 2001 – Includes a section on Federal Property Management Reform in which Federal agencies are encouraged to pursue the following measures by incorporating a “total asset management approach to Federal property issues” in order to:

- Improve life cycle planning and management
- Permit greater flexibility to optimize asset performance
- Provide incentives for better property management

The bill would allow the Federal Government to sell unused property and use the proceeds to purchase new property or sell Federal property to the private sector for redevelopment – the property could then be leased back to the Federal Government or a non-Federal entity. Key provisions of interest include:

Life Cycle Planning and Management Provisions:

- Amends the *Federal Property and Administrative Services Act of 1949* (*Property Act*) by adding a definition for “landholding agency,” defined as ‘any Federal agency that, by specific or general statutory authority, has jurisdiction, custody, and control over real property, or interests therein.’ The definition excludes agencies when they are disposing of real property for public benefit purposes and does not apply to Indian lands.
- Includes life cycle planning and management provisions including the creation of Section 213 of Title II of the *Property Act* requiring the GSA Administrator, in collaboration with heads of landholding agencies, to establish and maintain a set of real and personal property asset management principles to be applied to the real and personal property decision-making decision-process; establishes a set of principles to be used with respect to the outlease of Federal property through the use of public-private partnerships; requires the GSA Administrator to establish performance measurement benchmarks to determine the effectiveness of Federal real property management.

Enhanced Authorities for Real Property Management:

- Amends Title II of the *Property Act* by adding Section 215, “Criteria for Using Enhanced Asset Management Tools.” The head of each agency shall determine the following: whether the use of the asset management tool supports the goals and objectives in the

agency's Strategic Plan and the agency's real property asset management plan required in Section 214 of the amended *Property Act*; if the use of real property is economical, cost effective, and in the best interest of the U.S; and whether the management tool is documented in a business plan that analyzes all reasonable options for using the property and takes into account provisions of other applicable law. (e.g. the *McKinney-Vento Homeless Assistance Act* and the *National Environmental Policy Act*)

- Amends Title II of the *Property Act* to include Section 216 authorizing the use of asset management tools as described below.
 - **Section 216 (a)** includes requirements for interagency transfers or exchanges to allow Federal agencies to acquire replacement real property by exchange or transfer participation with another agency under mutually agreeable terms.
 - **Section 216 (b)** allows any landholding agency to acquire replacement of real property through sales or exchanges with non-Federal sources. The transaction must comply with applicable laws regarding Federal agency acquisition of real property; first, the agency must make the property available for transfer or exchange to other Federal agencies; and the transaction must result in the agency receiving fair market value consideration for the property sold or exchanged, which may include future consideration for the asset sold or exchanged.
 - **Section 216 (c)** allows a Federal agency, by lease, permit, license or similar instrument, to be able to make unexpired portions of leases of real property available for interim uses.
 - **Section 216 (d)** authorizes a Federal agency to be able to make underutilized portions of government-owned real property available through outlease agreements (in the form of a partnership, cooperative venture, limited liability company, or other business agreement) with a Federal agency or non-Federal agency. Any outleasing agreement shall not be longer than 50 years and the head of any landholding agency must first determine the following:
 - That there is no long-term mission requirement for the property, but the Federal government is not permitted to dispose of it; or
 - There is a continuing long-term mission requirement for the property to remain in government; and
 - The use for real property by the lessee will not be inconsistent with the agency's mission.
 - Provides a leaseback option to the Federal Government to occupy space in any facilities acquired, constructed, repaired, renovated, or rehabilitated by the non-government agency; the agreement does not have to guarantee government occupancy; authorizes disposition of leased property if the head of the agency determines that, during the term of an outlease involving the development or substantial rehabilitation/renovation of a Federal asset in partnership with a non-Federal entity, the property is no longer needed.
- **Adds Section 217, "Forms of Consideration,"** to Title II of the *Property Act* to allow the following forms of consideration received from an enhanced asset management tool authorized in Section 216: the receipt of cash or cash equivalents, other property (real or personal), in-kind assets, services, future consideration, or any combination thereof.
- **Adds Section 218, "Transaction Reports,"** to Title II of the *Property Act* to require Federal agencies to submit business plans to OMB and appropriate Congressional

committees concerning each transaction under Section 216 that involves a sale, exchange, or outlease to a non-Federal source of any asset valued at more than \$2 million at the time of the transaction.

- **Repeals Section 321** of the *Federal Property and Administrative Services Act*.
- **Amends Section 313** of the *Property Act* to provide for the care and handling of the disposal of surplus property, to be performed by GSA. Upon the written request of the head of the landholding agency, the GSA Administrator may delegate disposal authorities for surplus real and related personal property.

Incentives for Real and Personal Property Management Provisions:

- **Amends Section 204** of the *Property Act* to allow Federal agencies to retain the bulk of the net proceeds from real property transactions.
- **Amends Section 204** of the *Property Act* to authorize the establishment of individual asset accounts within the U.S. Treasury to provide funding for agencies' capital asset expenditures. Proceeds received by an agency from real property transactions shall be used to fund the agency's account. **Funds will be made available for the acquisition of new facilities and equipment; major construction; capital improvements; and renovations, alterations, expansions, restoration or other environmental services, and disposition expenses.** Funds will remain available until expended. Requires that agencies submit with the President's budget a detailed account of all real property transactions carried out during the previous fiscal year, including receipts and disbursements from the agency's capital asset account.
- Authorizes Federal agencies to be reimbursed the full direct and indirect costs of the disposing of real property; reimbursements will come from the monetary proceeds of real property dispositions or from other available resources, including the agency's capital asset account.
- Authorizes agencies to retain proceeds from real property dispositions rather than providing funding to other sources. (e.g. Land and Water Conservation Fund).
- Requires that, for fiscal years 2002 through 2006, OMB shall allocate by agency a share of the baseline estimate of the total surplus real property sales receipts transferred to the Land and Water Conservation Fund that were contained in the President's budget for fiscal year 2002. OMB shall notify affected agencies and the House and Senate Appropriation Committees of the allocation by agency within 30 days of this Act. On September 30 of each fiscal year, each agency shall transfer to the U.S. Treasury an amount equal to its allocation for that fiscal year out of the proceeds from any sales of the agency's surplus real property assets during that fiscal year. If an agency realizes less sale proceeds than its allocation for a fiscal year, the agency shall transfer all of its sale proceeds to the Treasury, and its allocation for the next fiscal year will be increased by the difference. If, on September 30, 2006, an agency has transferred less sale proceeds to the Treasury than its total five-year allocation, the agency shall transfer the difference out of any other funds the agency has available.

Streamlined and Enhanced Disposal Authorities:

- Amends the *Property Act* to include nonprofit organizations as eligible to receive surplus property for historic monument purposes.
- Amends the *Property Act* to eliminate certain negotiated sales requirements.
- Amends the Section 201 (c) of the *Property Act* to authorize the acquisition of personal property through the exchange or sale of personal property.
- Amends the *Property Act* to provide for the expansion of the current abandonment of property authority.
- Amends the *Property Act* to clarify certain donation authorities.
- Streamlines consideration of surplus real property for homeless assistance.

Freedom to Manage Act of 2001 – Establishes procedures for agency heads to identify barriers and resolve problems associated with good management.

In submitting the *Freedom to Manage Act of 2001* , President Bush said, the bill would:

[E]stablish a process for expedited congressional consideration of Presidential proposals to eliminate or reduce barriers to efficient Government operations through the repeal or amendment of laws that create obstacles to efficient management or the provision of new authority to agencies...Giving our Federal managers 'freedom to manage' will enable the Federal Government to improve its performance and accountability and better serve the public.

Following the President's remarks, Mitchell Daniels, Director of the Office of Management and Budget submitted to House Speaker Dennis Hastert (R/OH) the *Managerial Flexibility Act of 2001*. In his letter, he states that the bill would:

[E]stablish a procedure under which the President would identify structural barriers imposed by law, and Congress would quickly and decisively consider and act to remove those obstacles...would provide Federal managers with tools and flexibility in areas such as personnel, budgeting, and property management and disposal.

Executive Order 13231 – Critical Infrastructure Protection in the Information Age On October 16, President Bush signed the new order, which would **establish the President's Critical Infrastructure Protection Board to coordinate and have cognizance of Federal efforts and programs that relate to protection of information systems.** The board will also coordinate cooperative efforts with state and local governmental entities and the private sector; members will include the Secretaries of Energy, State, Defense, Commerce, Transportation, Treasury, senior national security and Office of Management and Budget officials, and selected White House staff members. The board, Federal, state and local government agencies, and the private sector will address a range of infrastructure issues as described in the following section:

Sec. 5 (a) Outreach to the Private Sector and State and Local Governments. In consultation with affected executive branch departments and agencies, **coordinate outreach to and consultation with the private sector, including corporations that own, operate, develop, and equip information, telecommunications, transportation, energy, water health care, and financial services, on protection of information systems for critical infrastructure,** including emergency preparedness communications, and the physical assets that support such systems; and coordinate outreach to State and local governments, as well as communities and representatives from academia and other relevant elements of society.

Sec. 5(a)(i) When requested to do so, assist in the development of voluntary standards and best practices in a manner consistent with 15 U.S. C. Chapter 7.

Sec. 5(a)(iii) Coordinate the activities of senior liaison officers appointed by the Attorney General, the Secretaries of Energy, Commerce, Transportation, the Treasury, and Health and Human Services, and the Director of the Federal Emergency Management Agency for outreach on critical infrastructure protection issues with private sector organizations within the areas of concern to these departments and agencies.

NOMINATIONS

Federal Energy Regulatory Commission – nomination announced for Joseph Kelliher to be a commissioner; currently Senior Policy Advisor to the Secretary of Energy.

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V. HEARINGS SCHEDULE

HOUSE – APPROPRIATIONS

- *No new hearings, mark ups or votes have been scheduled.*

HOUSE – AUTHORIZATIONS/OVERSIGHT

- *No new hearings, mark ups or votes have been scheduled.*

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SENATE – APPROPRIATIONS

- *No new hearings, mark ups, or votes have been scheduled.*

SENATE – AUTHORIZATIONS/OVERSIGHT

- *No new hearings, mark ups, or votes have been scheduled.*

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